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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

DAVID ZHANG,

Plaintiff and Respondent,

v.

JAMES LI,

Defendant and Appellant.

B279399

(Los Angeles County
Super. Ct. No. GC038906)

APPEAL from a judgment and order of the Superior Court
of Los Angeles County, William D. Stewart, Judge. Affirmed.

James Li, in pro. per., for Defendant and Appellant.

Garrett & Tully, Ryan C. Squire and Candie Y. Chang,
Plaintiff and Respondent.

FACTS AND PROCEEDINGS BELOW

Attorney James Li represented Michael Chui in a quiet title action and extended to Chui a line of credit to finance the litigation. Chui secured the credit line by giving Li five deeds of trust encumbering the subject property.

The October 2010 Judgment

On September 17, 2010, the trial court issued a statement of decision in which it found Chui owned only an undivided 50 percent interest in the subject property. The court ordered “partition of the property by sale,” specified how proceeds were to be distributed, and stated that if the parties could not agree on a real estate agent to market and sell the property they could apply to the court to have one appointed. The court ordered that these “executory provisions [be] made a part of th[e] Judgment,” and on October 6, 2010, entered judgment accordingly. The judgment contained no further reservation of jurisdiction.

Li, not Chui, moved on his own behalf to vacate the judgment on the ground that proceeds from sale of the property would not cover his attorney fees. The trial court denied the motion and Li appealed. We concluded that although Li had a cognizable interest in being paid for his legal services, he had no protectable interest in being paid specifically from the judgment proceeds. He was therefore not aggrieved by any purported insufficiency in the judgment and had no standing to have it vacated. (*Tsui v. Li* (Sept. 26, 2011, B229644) [nonpub. opn.].)

The July 2012 Order for Clerk Reconveyance Deeds

On remand the property could not be sold because Li refused to release his interest in Chui’s 50 percent share until his legal fees were paid. To overcome this obstacle, in July 2012 the trial court directed the clerk of the court to issue reconveyance

deeds to transfer Li's five trust deeds back to Chui (the July 2012 order).

The property was then sold to David Zhang. Senior lienholders were paid out of escrow and Li was paid for his interest as a junior lienholder, receiving approximately \$300.

Dissatisfied, Li thereafter recorded three notices of lis pendens against the property and moved to set aside the July 2012 order. He argued (1) the order violated his due process rights because he was given no notice of the proceedings, (2) he received no notice of the contents of the order, (3) the order was based on factual and legal predicates that no longer existed, (4) the order was infirm because it could be attacked by "multiple individuals," and (5) the order violated the contract clause of the federal Constitution. Trial court rejected each argument and denied Li's motion to set aside the July 2012 order.

Zhang then moved for leave to intervene in the action and filed a complaint-in-intervention in which he sought a declaration that he held undivided title to the property. Li answered the complaint-in-intervention and cross-complained. After substantial law and motion practice that resulted in dismissal of Li's cross-complaint-in-intervention and evidentiary and monetary sanctions levied against him, the matter proceeded to trial.

At the close of evidence and argument the trial court entered a judgment declaring that Li was bound by the July 2012 order and had no interest in the property, and Zhang held title free of legal encumbrance.

In September 2016, Li filed a motion to vacate the judgment on the ground that the July 2012 order was void. In a lengthy order the trial court denied the motion on the ground

that Li was barred by collateral estoppel from challenging the July 2012 order. This appeal followed.

DISCUSSION

A. The Appeal is Timely

As a preliminary matter, Zhang argues Li's appeal is untimely because it was filed 33 days after Zhang served a notice of the ruling denying Li's motion to vacate, a violation of California Rules of Court, rule 8.108 (notice of appeal must be filed within 30 days of notice of entry of the order being appealed). (Cal. Rules of Court, rule 8.108, subd. (c)(1), (Rule 8.108).) The argument is without merit.

Absent an extension of time a notice of appeal must be filed within 60 days after a party serves the appellant "with a document entitled 'Notice of Entry' of judgment." (Cal. Rules of Court, rule 8.104, subd. (a)(1)(B).) This time to appeal may be extended following a motion to vacate the judgment. In such a circumstance, "the time to appeal from the judgment is extended . . . until the earliest of . . . 30 days after . . . a party serves an order denying the motion or a *notice of entry* of that order [or] 180 days after entry of judgment." (Rule 8.108, subd. (c)(1), italics added.) Because application of the rule is jurisdictional and may work to preclude appeals, it must be strictly construed, and a document "captioned 'notice of ruling,' not 'notice of entry' " "[o]n its face [fails] to satisfy the specific requirement." (*20th Century Ins. Co. v. Superior Court* (1994) 28 Cal.App.4th 666, 671.)

Here, Zhang served on Li a document entitled "Notice of Ruling," not "notice of entry," which on its face failed to satisfy the strict requirements of Rule 8.108. Service of the document

therefore failed to trigger the 30-day extension of the time to appeal, and Li's notice of appeal 33 days later was timely.

Zhang argues time to appeal may be extended for 30 days only if—in the words of Rule 8.108—the appellant has filed a “valid” motion to vacate a judgment. He argues no extension should be granted to Li because his motion was not a valid attempt to vacate the judgment but rather an improper attempt to seek reconsideration of the trial court's many prior rulings upholding the July 2012 order.

The argument is without merit. In its comments on Rule 8.108 the Rules Advisory Committee stated: “Subdivisions (b)-(f) operate only when a party serves and files a ‘valid’ motion As used in these provisions, the word ‘valid’ means only that the motion . . . complies with all procedural requirements; it does not mean that the motion . . . must also be substantively meritorious.” Nothing in the record suggests, and Zhang does not argue, that Li's motion to vacate the judgment failed to comply with all procedural requirements.

B. Li's Motion to Vacate the Judgment was Properly Denied

Li charges half a dozen instances of error arising from the July 2012 order, which he contends is void for a single reason: The court lost jurisdiction over the subject property either 180 days after entry of the October 2010 judgment or upon remittitur after the prior appeal.

Li argues that because the trial court had no subject matter jurisdiction in 2012, the July 2012 order is void, and all subsequent orders depending on and pertaining to it, including several orders denying his motions to set it aside, were void. He argues discovery and monetary sanctions levied against him in

this litigation were invalid as predicated on a void order; adverse rulings during law and motion were similarly erroneous; the underlying proceedings were themselves improper because Zhang lacked standing to seek a declaration of his interest because he took title only as the result of the void July 2012 order; and the judgment should be reversed because it flowed solely from the July 2012 order. The argument is without merit.

It is fundamental in the nature of partition proceedings that court orders concerning sale of property and distribution of proceeds must be effectuated after judgment is entered, sometimes long after. Such factors as the condition of the property and uncertainties in the real estate market make the timing of sale uncertain, and it is not uncommon for matters to drag on for months or even years. A trial court may expressly reserve jurisdiction to act in the event the parties fail to comply with provisions of the judgment, but it need not do so, as Code of Civil Procedure section 872.120 (section 872.120) confers continuing jurisdiction by authorizing the court in a partition action to “hear and determine all motions, reports, and accounts and . . . make any decrees and orders necessary or incidental to carrying out the purposes of [section 872.010 et seq.] and to effectuating its decrees and orders.”¹ The Law Revision Commission noted that “while partition actions in California are a creature of statute [citation], they are nonetheless equitable in nature [citation], and the statutory provisions are to be liberally

¹ Section 872.120 provides: “In the conduct of the [partition] action, the court may hear and determine all motions, reports, and accounts and may make any decrees and orders necessary or incidental to carrying out the purposes of this title and to effectuating its decrees and orders.”

construed in aid of the court's jurisdiction." (Cal. Law Revision Com. com., Deering's Ann. Code Civ. Proc. (1996 ed.) foll. § 872.120, p. 193.)

"Where equity has acquired jurisdiction for one purpose, it will retain that jurisdiction to the final adjustment of all differences between the parties arising from the causes of action alleged." (*Klinker v. Klinker* (1955) 132 Cal.App.2d 687, 694.)

Here, section 872.120 vested the trial court with jurisdiction to issue orders, including the July 2012 order, necessary to effectuate its October 2010 partition judgment.

Li argues the October 2010 judgment of partition was a "final judgment," as evidenced from its provision for a cost award. He argues that by operation of Code of Civil Procedure section 1049 (an action is deemed to have ended when the time for appeal has passed), the partition action ended in 2011, when the time for appeal of the October 2010 judgment had passed. Li offers no authority in support of the argument, and we are aware of none. As noted above, an appeal must be taken within 60 days of a judgment. If Code of Civil Procedure section 1049 divested a trial court of jurisdiction in a partition action (notwithstanding section 872.120), then every partition sale would have to occur within 60 days of the judgment absent an express reservation of jurisdiction. No principle supports such a scheme.

The better scheme, as the Law Revision Commission noted, is to liberally construe section 872.120 in aid of the court's jurisdiction until "the final adjustment of all differences between the parties arising from the causes of action alleged." (*Klinker v. Klinker, supra*, 132 Cal.App.2d at p. 694.)

Li argues several other events divested the trial court of jurisdiction. For example the parties stipulated post-judgment to

an alternative method for selecting a real estate agent to sell the property, and in May 2012 the court ordered that Chui's deed be placed into escrow, divesting him of any further interest in the proceedings. But it is undisputed that even after these events the ordered sale had still not occurred, and due to Li's intransigence would not occur absent a court order. The July 2012 order therefore remained necessary to effectuate the October 2010 judgment.

Li offers in bullet-point fashion several other arguments as to why the July 2012 order was improper, e.g., he was not a party to the underlying action, merely an attorney for a party; and a court judgment that deprives a person of property violates the takings clauses in the federal and state Constitutions. He also asserts in narrative fashion that several irregularities occurred below, including misrepresentations made to the court, which perpetrated a fraud on both Chui and the court. As these points are supported neither by discussion nor citation to authority we need not consider them.

Because we completely reject Li's jurisdictional claim on the merits, we need not consider his or Zhang's many arguments concerning whether Li's successive attacks on the July 2012 order were barred as improper relitigation of a settled issue.

DISPOSITION

The judgment is affirmed. Respondent shall recover his costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.